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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,592	02/18/2004	Keith A. Tabor	470223.91468-1	3373

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EXAMINER

LAZO, THOMAS E

ART UNIT	PAPER NUMBER
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3745

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,592

Applicant(s)

TABOR, KEITH A.

Examiner

Thomas E. Lazo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-20 is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,8,9,11 and 12 is/are rejected.
- 7) ☒ Claim(s) 4,7,10 and 13-15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/18/04 8/16/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,718,759. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 3 of the patent "anticipates" application claim 1. Accordingly, application claim 1 is not patentably distinct from patent claim 3. Here, patent claim 3 requires a method comprising requesting a desired velocity, sensing a parameter, sensing a pressure in a supply or return line, deriving an equivalent flow coefficient, a valve, and activating the valve based on the equivalent flow coefficient, while application claim 1 only requires a method comprising specifying a desired velocity, sensing a parameter, deriving an equivalent flow coefficient, a control valve, and operating the control valve in response to the equivalent flow coefficient. Thus it is apparent that the more specific patent claim 3 encompasses application claim 1. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a

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patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer. Note that since application claim 1 is anticipated by patent claim 3 and since anticipation is the epitome of obviousness, then application claim 1 is obvious over patent claim 3.

Claims 2, 3, 5, 6, and 8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 4, 5, 6, and 7 of U.S. Patent No. 6,718,759, respectively, as applied to claim 1 above in view of Miki et al (EPO 796 952). Patent claims 2, 4, 5, 6, and 7 disclose all of the claimed subject matter further including controlling the fluid in the hydraulic system based on the equivalent flow coefficient, sensing hydraulic pressure, calculating a pressure setpoint based on the equivalent flow coefficient, controlling pressure in the supply or return line in response to the pressure setpoint, sensing pressure in the return line to produce a return pressure measurement, sensing a pressure produced by the force acting on the hydraulic actuator to produce an actuator pressure measurement, and using the parameter to control pressure in the supply or return line in response to the force acting on the hydraulic actuator, wherein calculating a pressure setpoint is based on the return pressure measurement and calculating a pressure setpoint is based on the actuator pressure measurement. The patent claims 2, 4, 5, 6, and 7 do not disclose operating the control valve in response to the equivalent flow coefficient to control the fluid in the circuit branch.

Miki et al. teaches for a method of operating a hydraulic system by operating a main control valve (figure 5) in response to a flow coefficient to control the fluid in a circuit branch

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for the purposes of augmenting the driving feeling and workability of a construction machine.

See Miki et al. pages 9-13.

Since patent claims 2, 4, 5, 6, and 7 and Miki et al. are both methods of operating a hydraulic system, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to control the fluid in the hydraulic system, based on the teachings of Miki et al., by operating the control valve in response to the equivalent flow coefficient for the purposes of augmenting the driving feeling and workability of a construction machine.

Claims 9, 11, and 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 4 of U.S. Patent No. 6,718,759, respectively, in view of Miki et al (EPO 796 952). Patent claims 1, 2, and 4 disclose all of the claimed subject matter except for first and second electrohydraulic proportional valves and operating the first and second electrohydraulic proportional valves in response to the equivalent flow coefficient to control the fluid in the circuit branch.

Miki et al. teaches for a method of operating a hydraulic system by operating first and second electrohydraulic proportional valves 202,203 in response to a flow coefficient to control the fluid in a circuit branch for the purposes of augmenting the driving feeling and workability of a construction machine. See Miki et al. pages 9-13.

Since patent claims 1, 2, and 4 and Miki et al. are both methods of operating a hydraulic system, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to control the fluid in the hydraulic system, based on the teachings of Miki et al., by operating the first and second electrohydraulic proportional valves in response to

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the equivalent flow coefficient for the purposes of augmenting the driving feeling and workability of a construction machine.

Allowable Subject Matter

Claims 4, 7, 10, and 13-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

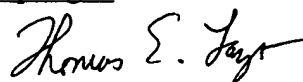
Claims 16-20 are allowed.

Contact Information

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Thomas Lazo whose telephone number is (571) 272-4818. The examiner can normally be reached on Monday-Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Edward Look, can be reached on (571) 272-4820. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to status of this application or proceeding should be directed to the Patent Application Information Retrieval (PAIR) system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.



Thomas E. Lazo
Primary Examiner
Art Unit 3745

TEL
March 31, 2005